



DEPARTMENT OF TRANSPORTATION
HAZARDOUS MATERIALS REGULATIONS BOARD
WASHINGTON, D.C. 20590

16836

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-36; Amendments Nos. 171-7, 173-39, 174-7, 175-5, 176-3, 177-14]

REPORTS OF HAZARDOUS MATERIALS INCIDENTS

The purpose of this amendment to the Department's Hazardous Materials Regulations is to establish uniform requirements for (1) immediate telephonic reports of serious incidents involving hazardous materials; and (2) written reports containing detailed information for certain hazardous materials incidents.

This amendment is based on a notice of proposed rule making published in the *FEDERAL REGISTER* October 29, 1969, Docket No. HM-36; Notice No. 69-29 (34 F.R. 17450). (Separate notices of proposed rule making were issued by the U.S. Coast Guard and the Federal Aviation Administration and were published in the same issue of the *FEDERAL REGISTER*. Final action on these notices is announced in documents published at pages 16829 and 16832 of this issue.) A number of comments were received in response to that notice and all of the comments were carefully considered. The most significant comments and the changes that were made in this amendment as a result of the comments are discussed below.

A number of comments recommended that the reports to be submitted to the Department on hazardous materials incidents should be classified as confidential and should not be made available to the general public. The commenters suggested a number of reasons for the requested confidentiality. For example, several indicated that the reporters would be much more candid if the comments were not to be available to the general public.

Most of the arguments for classifying hazardous materials incident reports as confidential are necessarily speculative. After considering and analyzing all the comments, the Board concludes that they do not contain any argument substantial enough to require that the reports be kept confidential.

It is the policy of the Department of Transportation to make information available to the public to the greatest extent possible in keeping with the spirit of the Freedom of Information Act (5 U.S.C. 552). In the light of that statute, a refusal to permit the public access to accident reports would be contrary to sound policy. The public is better served by not keeping such reports confidential.

The only statutory exceptions to the basic requirement of disclosure are set out in section 552(b). None of these exceptions provides confidentiality for the reports under consideration here. Section 552(b)(4) excepts "trade secrets and commercial or financial information obtained from a person and privileged or confidential". However, the legislative

history indicates that this exception refers to instances where privileged information (not required by law, and that would not customarily be released to the public) is voluntarily furnished and received in confidence. Examples are commercial or financial information submitted with loan applications, or information voluntarily given to the Government in confidence for the purpose of compiling statistics which are then published in the aggregate.

Moreover, in promulgating the regulations by which the Department implemented the Freedom of Information Act (49 CFR Part 7), the Secretary announced that "the policy of the Department will be to make all information available to the public except that which must not be disclosed in the national interest, to protect the right of an individual to personal privacy, or to insure the effective conduct of public business. To this end, the (regulation) provides that information will be made available to the public even if it falls within one of the exemptions set forth in section 552(b), unless the release of that information would be inconsistent with the purpose of the exemption" (32 F.R. 9287 (1967)).

The exemption of documents from mandatory public disclosure merely authorizes the Secretary to withhold them, it does not compel him to do so.

Section 7.51 of the Department's regulations provides that, even though a record is exempt from public inspection, nevertheless the Department will release it, "unless it determines that the release of that record would be inconsistent with a purpose of" the particular exemption.

A number of commenters suggested that the Department should require carriers to furnish the concerned shipper with a copy of each hazardous materials incident report. The basis for this suggestion was that the shipper should have an opportunity to review the carriers description of the incident so that the shipper could file a supplementary report if he felt that the carriers report did not state the facts fairly. While the Department does not agree that a carrier should be required to file a copy of each incident report with the concerned shipper, this does not mean that the Department is not interested in obtaining any supplemental information that a shipper may wish to provide concerning a hazardous materials incident. Since the incident reports will be available to the general public and since it is likely that shippers will be appraised of hazardous materials incidents of interest to them, any shipper is free to review a carrier's report relating to a specific incident and to file supplemental information on that incident with the Department. After the incident reporting system has been in effect for a period of time, the Department will review its effectiveness and, if it is found necessary, additional rule making action could be taken to formalize shipper input on hazardous materials incidents.

The most significant comments made by a large number of commenters with

respect to the immediate telephonic reporting requirement was that, under proposed criteria, the Department would be receiving telephonic notification in many instances where it was not clear that the incident would be of such significance to require any immediate action by anyone within the Department of Transportation. Upon reviewing the criteria proposed for telephonic notification and the experience of the Office of Pipeline Safety under its immediate report requirement (which has been in effect for approximately 8 months), it has been concluded that there is justification for further limiting the criteria for immediate notification. This has been done by (1) increasing the property damage from \$5,000 to \$50,000; (2) eliminating the requirement for a telephonic notification where it is estimated that the resumption of normal transportation facilities involved would be prevented for 2 hours or more; and (3) by establishing an overall judgmental requirement that carriers should notify the Department when they believe that the incident is of such significance as to warrant a telephonic notification even though it does not involve a fatality, serious injury, or property damage in excess of \$50,000. Incidents involving a significant continuing danger to life would be one type that would fall into this last category.

A number of commenters indicated that the 15-day reporting requirement for the written report might in many cases be difficult to comply with. It is recognized that in some cases a carrier may find it difficult to furnish all of the information required in the incident reporting form within 15 days of the incident. However, the Board believes that in the vast majority of cases this information should be available within a few days of the incident and that the clerical work involved in completing the form should not delay the submission for longer than 15 days. In the event the carrier is not able to obtain all the necessary information within the 15-day period, it may submit the report and file a supplementary report when the additional information becomes available.

A number of commenters objected to the requirement that a detailed written report must be filed in every case where there "has been an unintentional release of hazardous materials from a package." Many commenters felt that the Department would as a result of this requirement be flooded with numerous incident reports relating to the release of insignificant amounts of hazardous materials. These commenters pointed out that this would place a substantial and apparently unnecessary paper work burden on both the carriers and the Department. The Board does not feel that it is in a position at this time to determine whether there are insignificant unintentional releases of hazardous materials that do not warrant the filing of a written report. While it may be true that under the amendment the Board will receive reports of unintentional releases of hazardous materials that may prove to be insignificant, the Board does not have any criteria at this time on which

It could draw a line between those releases that should be reported and those that should not. As experience is gained under this incident report program, the program will be subject to continuing review. If it is found that the present criteria is putting an undue burden on carriers and that the Board is receiving unusable or irrelevant incident reports, the Board will not hesitate to review the reporting requirements and to take future rule-making action.

A number of commenters made specific suggestions as to detailed requirements of the incident report. Many of these comments were considered warranted and a number of changes have been made in the report form. For example, many commenters pointed out that Item C of the proposed report was entitled probable causes while many of the items listed thereunder were not in actuality "probable causes". The most significant overall comment by a number of commenters on the report form was that it was too detailed and that it would result in the Board receiving much more information than is necessary for the purposes for which the report is required. Each of the items in the report form has been carefully reviewed in the light of this criticism. The Board does not agree that the report form is unduly detailed nor does the Board believe the completion of the form will place any undue burden on carriers. Nevertheless, as indicated above, this is the first comprehensive hazardous materials incident reporting system for all modes of transportation and the Board intends to continually review the requirements adopted in this amendment in the light of the information received under its requirements. As both the carriers and the operating administrations of the Department of Transportation acquire experience under the new incident reporting system, it may well be that the Board will wish to review some of the requirements in the form presently adopted. The Board will be interested in hearing of actual experience from carriers in completing the forms and their recommendations for further changes in the forms, whether deletions therefrom or additions thereto.

Due to the time required to prepare, print, and distribute adequate supplies for use, the printed forms may not be available at the time this regulation becomes effective. In that event, a small supply of temporary forms will be distributed for use until receipt of permanent forms. These temporary forms may be obtained in limited quantities from the Office of Hazardous Materials, Department of Transportation, Washington, D.C. 20590. They may be reproduced by any company if additional copies are needed in the interim period.

In consideration of the foregoing, 49 CFR Parts 171, 173, 174, 175, 176, and 177 are amended as follows:

I. Part 171.

(A) In Part 171, Table of Contents, §§ 171.15, 171.16 are added to read as follows:

Sec.

171.15 Immediate notice of certain hazardous materials incidents.

171.16 Detailed hazardous materials incident reports.

(B) Section 171.15 is added to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) At the earliest practicable moment, each carrier who transports hazardous materials shall give notice in accordance with paragraph (b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which as a direct result of hazardous materials—

(1) A person is killed;

(2) A person receives injuries requiring his hospitalization;

(3) Estimated carrier or other property damage exceeds \$50,000, or

(4) A situation exists of such a nature that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of subparagraphs (1), (2), or (3) of this paragraph, e.g., a continuing danger to life exists at the scene of the incident.

(b) Each notice required by paragraph (a) of this section shall be given the Department by telephone at Area Code 202 426-1830, and must include the following information:

(1) Name of reporter.

(2) Name and address of carrier represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Classification, name, and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by § 171.16.

(C) § 171.16 is added to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form F 5800.1¹ to the Department within 15 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank).

(b) Each carrier making a report under this section shall send that report to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, Washington, D.C. 20590.

¹ Filed as part of the original document.

II. Part 173.

(A) In Part 173, Table of Contents, § 173.11 is canceled.

§ 173.11 [Canceled]

(B) § 173.11 is canceled.

III. Part 174.

(A) In Part 174, Table of Contents, §§ 174.508, 174.565 are canceled; § 174.506 is amended to read as follows:

Sec.

174.506 Reporting hazardous materials incidents.

(B) § 174.506 is amended to read as follows:

§ 174.506 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter. In addition, each carrier is requested to report each such accident to the Bureau of Explosives, American Railroads Building, 1920 L Street NW., Washington, D.C. 20036, Telephone (202) 293-4048.

§ 174.508 [Canceled]

(C) § 174.508 is canceled.

§ 174.565 [Canceled]

(D) § 174.565 is canceled.

IV. Part 175.

(A) In Part 175, Table of Contents, § 175.660 is amended to read as follows:

Sec.

175.660 Reporting hazardous materials incidents.

(B) § 175.660 is amended to read as follows:

§ 175.660 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter.

V. Part 176.

(A) In Part 176, Table of Contents, § 176.707 is amended to read as follows:

Sec.

176.707 Reporting hazardous materials incidents.

(B) § 176.707 is amended to read as follows:

§ 176.707 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter.

VI. Part 177.

(A) In Part 177, Table of Contents, § 177.814 is canceled; § 177.807 is amended to read as follows:

Sec.

177.807 Reporting hazardous materials incidents.

(B) § 177.807 is amended to read as follows:

§ 177.807 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter.

§ 177.814 [Canceled]

(C) § 177.814 is canceled.

This amendment is effective December 31, 1970.

(Sec. 831-835, title 18 U.S.C.; sec. 9, Department of Transportation Act, 49 U.S.C. 1657)

Issued in Washington, D.C., on October 27, 1970.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

F. C. TURNER,
Administrator,
Federal Highway Administration.

[F.R. Doc. 70-14707; Filed, Oct. 30, 1970; 8:51 a.m.]

DEPARTMENT OF TRANSPORTATION

Form Approved OMB No. 04-5613

HAZARDOUS MATERIALS INCIDENT REPORT

INSTRUCTIONS: Submit this report in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, Washington, D.C. 20590, (ATTN: Opr. Div.). If space provided for any item is inadequate, complete that item under Section H, "Remarks", keying to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Secretary, Hazardous Materials Regulations Board. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.

A INCIDENT			
1. TYPE OF OPERATION 1 <input type="checkbox"/> AIR 2 <input type="checkbox"/> HIGHWAY 3 <input type="checkbox"/> RAIL 4 <input type="checkbox"/> WATER 5 <input type="checkbox"/> FREIGHT FORWARDER 6 <input type="checkbox"/> OTHER (Identify) _____			
2. DATE AND TIME OF INCIDENT (Month - Day - Year) _____. _____. _____. _____ a.m. _____ p.m.		3. LOCATION OF INCIDENT	
B REPORTING CARRIER, COMPANY OR INDIVIDUAL			
4. FULL NAME		5. ADDRESS (Number, Street, City, State and Zip Code)	
6. TYPE OF VEHICLE OR FACILITY			
C SHIPMENT INFORMATION			
7. NAME AND ADDRESS OF SHIPPER (Origin address)		8. NAME AND ADDRESS OF CONSIGNEE (Destination address)	
9. SHIPPING PAPER IDENTIFICATION NO.		10. SHIPPING PAPERS ISSUED BY <input type="checkbox"/> CARRIER <input type="checkbox"/> SHIPPER <input type="checkbox"/> OTHER (Identify) _____	
D DEATHS, INJURIES, LOSS AND DAMAGE			
DUE TO HAZARDOUS MATERIALS INVOLVED			13. ESTIMATED AMOUNT OF LOSS AND/OR PROPERTY DAMAGE INCLUDING COST OF DECONTAMINATION (Round off in dollars) \$
11. NUMBER PERSONS INJURED	12. NUMBER PERSONS KILLED		
14. ESTIMATED TOTAL QUANTITY OF HAZARDOUS MATERIALS RELEASED			
E HAZARDOUS MATERIALS INVOLVED			
15. CLASSIFICATION (Sec. 172.4)	16. SHIPPING NAME (Sec. 172.5)	17. TRADE NAME	
F NATURE OF PACKAGING FAILURE			
18. (Check all applicable boxes)			
(1) DROPPED IN HANDLING	(2) EXTERNAL PUNCTURE	(3) DAMAGE BY OTHER FREIGHT	
(4) WATER DAMAGE	(5) DAMAGE FROM OTHER LIQUID	(6) FREEZING	
(7) EXTERNAL HEAT	(8) INTERNAL PRESSURE	(9) CORROSION OR RUST	
(10) DEFECTIVE FITTINGS, VALVES, OR CLOSURES	(11) LOOSE FITTINGS, VALVES OR CLOSURES	(12) FAILURE OF INNER RECEPTACLES	
(13) BOTTOM FAILURE	(14) BODY OR SIDE FAILURE	(15) WELD FAILURE	
(16) CHIME FAILURE	(17) OTHER CONDITIONS (Identify)	19. SPACE FOR DOT USE ONLY	

G PACKAGING INFORMATION - If more than one size or type packaging is involved in loss of material show packaging information separately for each. If more space is needed, use Section H "Remarks" below keying to the item number.

ITEM		#1	#2	#3
20	TYPE OF PACKAGING INCLUDING INNER RECEPTACLES (Steel drums, wooden box, cylinder, etc.)			
21	CAPACITY OR WEIGHT PER UNIT (55 gallons, 65 lbs., etc.)			
22	NUMBER OF PACKAGES FROM WHICH MATERIAL ESCAPED			
23	NUMBER OF PACKAGES OF SAME TYPE IN SHIPMENT			
24	DOT SPECIFICATION NUMBER(S) ON PACKAGES (21P, 17E, 3AA, etc., or none)			
25	SHOW ALL OTHER DOT PACKAGING MARKINGS (Part 178)			
26	NAME, SYMBOL, OR REGISTRATION NUMBER OF PACKAGING MANUFACTURER			
27	SHOW SERIAL NUMBER OF CYLINDERS, CARGO TANKS, TANK CARS, PORTABLE TANKS			
28	TYPE DOT LABEL(S) APPLIED			
29	IF RECONDITIONED OR REQUALIFIED, SHOW	A	REGISTRATION NO. OR SYMBOL	
		B	DATE OF LAST TEST OF INSPECTION	
30	IF SHIPMENT IS UNDER DOT OR USCG SPECIAL PERMIT, ENTER PERMIT NO.			

H REMARKS - Describe essential facts of incident including but not limited to defects, damage, probable cause, stowage, action taken at the time discovered, and action taken to prevent future incidents. Include any recommendations to improve packaging, handling, or transportation of hazardous materials. Photographs and diagrams should be submitted when necessary for clarification.

31. NAME OF PERSON PREPARING REPORT (Type or print)

32. SIGNATURE

33. TELEPHONE NO. (Include Area Code)

34. DATE REPORT PREPARED